IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12916 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT SD/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? NO

2. To be referred to the Reporter or not? NO

3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge? NO

MOHAN BHAI RANCHHODBHAI BHOI
SINCE DECEASED THROUGH HIS HEIRS
& LEGAL REPRESENTATIVES

Versus

DHULIBEN W/O SHANABHAI SAIJIBHAI
AND OTHERS.

Appearance:
MR PJ PATEL for Petitioners
MR MAHASUKH B SHAH for Respondent No. 1
MR JASWANTLAL SHAH for Respondent No. 2
Respondent No. 6 served by D.S.

CORAM : MR.JUSTICE H.R.SHELAT
Date of decision: 16/10/96

ORAL JUDGEMENT

The orders passed by the Mamlatdar & A.L.T., Anand, on 15th February 1988 holding deceased Shanabhai Saijibhai through whom the respondent claim the right to be the tenants of 0 Acre-11 Gunthas of land of Survey No. 489/1 situate within the local limits of village Adas in Anand Taluka, and confirmed in appeal by

the Deputy Collector on 29th August 1989, as well as by the Gujarat Revenue Tribunal in revision on 9th August, 1994 are under challenge in this petition filed under Art. 227 of the Constitution of India.

2. There is an agricultural land bearing Survey No. 489/1 admeasuring 0 Acre-20 Gunthas in all. Formerly deceased Shanabhai Saijibhai was cultivating the whole of the land. Lateron according to the petitioner who is the landlord, deceased was cultivating only 9 Gunthas of the land, while he has been cultivating 11 Gunthas of the land. Such cultivation came into being prior to 1950. After the Bombay Tenancy Act came into force, the Mamlatdar & A.L.T. at Anand in the year 1976 initiated the proceedings under Sec.70B of the Bombay Tenancy Act (for short 'the Act'). He found that the petitioner was cultivating 11 Gunthas of the land as owner. He also found that as back as in 1962 Shanabhai Saijibhai Bhoi had already voluntarily parted with the land admeasuring 9 Gunthas waiving all his tenancy rights and other interest and therefore, he thought it fit to close the chapter. Accordingly, he passed the order on 27th February 1978. Shanabhai Saijibhai being aggrieved by the order preferred the appeal being Tenancy Appeal No. 2438 of 1979. The Deputy Collector, hearing the appeal, remanded the matter for afresh consideration, passing the order on 4th October, 1979. The Mamlatdar & A.L.T., hearing the parties again, on 17th June 1983 held that Shanabhai Saijibhai was in possession of the land admeasuring 11 Gunthas of land bearing Survey No. 489/1 on 15th June 1955- the appointed day under the Act. He, therefore, further held that he was entitled to purchase that land. So far as the land admeasuring 9 Gunthas was concerned, it was clearly held that Shanabhai Saijibhai was not the tenant and was not in possession as he had voluntarily parted with the possession as back as in 1953 or thereabout. The petitioner, therefore, preferred Tenancy Appeal being No.TEN BA 6150/83. The Deputy Collector, hearing the parties, again remanded the matter for a fresh trial passing the order on 23rd January, 1984. It may be stated at this stage that Shanabhai Saijibhai had died by that time, and therefore, his heirs and legal representatives who are the respondents before me were brought on record and the case was heard. The deceased Shanabhai Saijibhai was held to be the tenant as he was found to be in possession of the land on 15th June, 1955 -the appointed day. He was, therefore, according to A.L.T., entitled to the possession of the land and purchase the same. The petitioner then preferred Tenancy Appeal No. 94/88. The Deputy Collector was then pleased to dismiss the appeal on 29th

August 1989. Being aggrieved by the order of the Deputy Collector in appeal, the present petitioner preferred the revision application before the Gujarat Revenue Tribunal being TEN BA No. 280/90 on 9th August 1994. The Tribunal dismissed the revision application confirming the order of the Deputy Collector and the Mamlatdar and A.L.T. Hence the present petition is preferred before me by the petitioner calling in questions the legality and propriety of the orders passed by all the three forums hereinbelow.

3. It has been contended on behalf of the petitioner that the Mamlatdar & A.L.T. as well as in appeal the Deputy Collector and in revision, the Gujarat Revenue Tribunal, erred in holding that on 15th June 1985- the appointed day, the deceased Shanabhai Saijibhai was in possession, and therefore, he was entitled to purchase the land. In fact, after the Act came into force in the year 1948, the Mamlatdar & A.L.T. at Anand had initiated the proceedings under Sec.32G of the Act, wherein he recorded the statement not only of the petitioner but also of the deceased Shanabhai Saijibhai. His statement was recorded on 13th July 1962, wherein he has categorically stated that he was not at all cultivating 9 Gunthas of land of that field, and he had already given the possession of that 9 Gunthas of land to the present petitioner before about 8 to 10 years. At that time, he did not make it clear before the Mamlatdar although it was the inquiry for whole of the land of 20 Glunthas that he was also cultivating the rest of the portion of the land admeasuring 11 Gunthas i.e. the land in question, If at all he was cultivating, certainly he would have stated and claimed his tenancy rights. On the same day, the Mamlatdar also recorded the statement of the petitioner, wherein the petitioner has asserted his sole right as owner making it clear that being the owner, he was cultivating that land of 11 Gunthas. At that time the deceased Shanabhai Saijibhai did not raise any objection against the statement made by the petitioner. By such statement, it was made clear that once in past prior to 1952, deceased Shanabhai Saijibhai was cultivating only 9 Gunthas of land of that field, but certainly not 11 Gunthas of the land, and he was having no right, title or interest whosoever therein. In view of such statement, the chapter u/s. 32G of the Act was closed qua the whole of the land. However the Mamlatdar & A.L.T. ignored the statement made by the deceased and erroneously held simply on the basis of certain entries in Pahani Patrak that deceased Shanbhai Saijibhai was in possession of 11 Gunthas of land on 15th June 1955, and therefore, he was entitled to purchase the land even

though he was later on dispossessed. The Mamlatdar ought to have considered the impact of such relevant statement of the party made in past taking oral as well as other documentary evidence on record, rather than being obsessed with the entries alone in the revenue record. The relevant statement of the party made in past cannot be discarded simply on the ground that it was made in another proceeding.

4. Mr. Shah, the learned advocate representing the respondents, has against such contention, vehemently submitted that there is no reason to accept the case of the petitioner. All the three forums below were perfectly right in reaching the conclusion in favour of the respondents. The entries made in revenue record were sufficient to hold that on 15th June 1955, deceased Shanabhai Saijibhai was in possession of 11 Gunthas of land and as such he was entitled to purchase the land.

5. Before I proceed to dissect merits of the rival contentions, it may be stated that in this petition, and in the tenancy case below, no claim is advanced by either of the parties qua 9 Gunthas of land. There is also no dispute about 9 Gunthas of land. The subject matter of the petition is 11 Gunthas of the land and in that regard, case is pleaded and points are raised. The parties have, while making submissions, raised several questions of fact. It may be stated that while exercising the jurisdiction either under Art. 226 or 227 of the Constitution, this court will not inquire into the merits of the questions of fact, and conclusions thereof reached by the different Forums below. Although this court cannot interfere with conclusions reached by the Tribunals or other Forums below, it is open to examine the question of appreciation of evidence being the question of law. If the appreciation of evidence and conclusions drawn appear to be capricious, perverse, arbitrary, mistaken, misconceived or wholly against the sound principles of law; or if it appears that there is mis-reading of evidence or miscarriage of justice, this court can well under writ jurisdiction inquire into the question of appreciation of evidence -the question of law.

6. The Tribunals below, considering the facts on record found, that deceased Shanabhai Saijibhai was in possession of 11 Gunthas of land on 15th June 1955, the appointed day. For reaching such conclusion, sole reliance is placed on certain entries in Pahani Patrak, copy of which is produced at Annexure B. It appears that from 1944-45 to 1951-52, deceased Shanabhai Saijibhai was

cultivating the whole of the field i.e. 20 Gunthas of land. Whatever might have developed lateron between the parties in 1952-53, the petitioner's name appeared indicating that the petitioner was cultivating 11 Gunthas of land while name of deceased was written showing that he was cultivating 9 Gunthas of land, such position in record continued upto 1957-58. Thereafter because of the different orders came to be passed by Mamlatdar or Tribunals, again the name of the deceased was entered as 'cultivating' the whole of the land namely 20 Gunthas for two years namely 1958-59 and 1959-60. When the name of the deceased Shanabhai Saijibhai was entered accordingly in order to show that he was cultivating 11 Gunthas of land right from 1952-53 to 1957-58, it has been assumed by all the three Tribunals below that the deceased must be in possession of the land in question on the appointed day i.e. 15th June, 1955, and therefore, he was not only entitled to actual possession, because at that time, the deceased was not in actual possession but to purchase the land also. If one goes by the entries in Pahani Patrak alone hereinabove referred to in the absence of other evidence, there can have naturally no reason to disagree with the conclusions arrived at by the Tribunals and disturb the same being the question of fact; but here in this case, appreciation of evidence with regard to deceased being in possession on 15th June, 1955 is certainly the result of either arbitrary or perverse or capricious appreciation of the evidence resulting into the miscarriage of justice. In order to adjudicate the dispute before it truly and justly, it is the duty of the Tribunal and Court, keeping relevant law governing the issue in mind, to consider every piece of relevant evidence and impact thereof and draw the conclusion, the logical outcome or eduction thereof. Omission to do so amounts to faulty appreciation of evidence leading to miscarriage of justice.

7. It is pertinent to note that on 13th July 1962, when inquiry under sec.32G of the Act was held, the statement of the deceased was recorded by the Mamlatdar, wherein the deceased made it clear that he was cultivating 9 Gunthas of land, and possession thereof was voluntarily surrendered in favour of the present petitioner about 8 years prior to that day, meaning thereby that he parted with the possession voluntarily in the year 1954 or prior to it, indicating that the above referred entries were not echoing the real truth. This statement ought to have been considered by the Tribunals below, but the same is for one or another reason conveniently kept out of consideration or overlooked. It's not that the attention was not drawn. The statement

is referred to by the Tribunals below, mentioning about the arguments advanced, but at the time of discussion and drawing conclusions, the same is conveniently or inadvertently for one or the another reason ignored, and merely placing reliance on the entries in Pahani Patrak, not reflecting the reality, the conclusion is drawn, and that shows that appreciation of evidence made and conclusion drawn are capricious or arbitrary or perverse or wholly against the sound principles of law.

8. Faced with such situation, Mr. Shah, the learned advocate for the respondent no.2, has contended that the statement dt. 13/7/1962 produced at Annexure- C was qua the 9 Gunthas of land and not with regard to the land in question, and so the same will have no impact over the issue or evidence on record. Below that statement, the statement of the petitioner has been recorded on the same day in presence of the deceased, wherein the petitioner asserts his right qua 11 Gunthas of land, that he was the owner of that land, and was personally cultivating the same. Despite such statement having been made in his presence, the deceased never objected advancing his claim, and did not refute the case of the petitioner. He did not urge to record his statement that he was cultivating the land in question, even after he surrendered the possession of 9 Gunthas of land. If at all, the Mamlatdar had not paid any heed to his request, he would have, later on within a reasonable time, taken appropriate step but he remained inert upto 1976 for about 14 years, after his statement in Tenancy Case No. 809 of 1962, was recorded. The Mamlatdar then passed the order on 13th July 1962, a copy of which is produced at Annexure D closing the chapter on ground that nothing was required to be done qua 9 Gunthas of land, when the deceased had already voluntarily surrendered the possession and had waived his right and interest, and further he was not the tenant of the land in question, but the petitioner was both the owner and tenant as cultivating the same personally. The order closing the proceedings in clear terms shows that the statements were recorded in respect of the whole of the area and not area of 9 Gunthas, as canvassed by Mr. Shah, the learned advocate. The contention, therefore, cannot be sustained.

9. In view of such facts, different questions in respect of the possession arise, namely (1) Under what contemplation or intention, he made the above referred statement dt. 13/7/1962; (2) Whether he was really in possession of the whole of the land; (3) When and how he surrendered the possession of 9 Gunthas of land; (4)

whether he continued to be in possession of the land in question, if not, (5) Whether he was dispossessed by force or threat, mischief, or fraud, or trick or any unjust device; (6) Whether it was voluntary surrender, if yes, (7) Whether in view of Sec.15 r/w sec.29 of the Act, it was written and the same was verified by the Mamlatdar and the Mamlatdar, was satisfied about the same being voluntary, (8) Whether he can be said to be in possession; (9) Whether he lost the right to purchase the land; (10) How and when above stated entries came to be mutated, whether he was aware about the same; and (11) Whether he is having oral or documentary evidence in support of his case and the like. All these questions that arise for consideration are not effectively dealt with taking in account the statement recorded by the Mamlatdar on 13th July 1962 along with other evidence on record, and the same is either conveniently or inadvertently kept out of consideration, with the result, there is no proper appreciation of the whole of the evidence on record important aspect thereof and every piece of evidence coupled with allied points are not considered. The appreciation of evidence is, therefore, one sided, arbitrary and perverse leading to miscarriage of justice. In the result, the impugned orders cannot be maintained. In view of the matter, the petition deserves to be allowed.

10. What should be the final order is the point now arises for determination, should I decide the case finally and have the end of the chapter or the case should be remanded to the Mamlatdar and A.L.T., Anand for afresh consideration. I am aware about my duty in law. The court should not stop or feel satisfied by finding out errors or infirmities or illegalities, but should set at rest the dispute between the parties and have finality in the matter. In this case, the parties are battling since 1976, but as stated above, because of the omission to consider the statement, several questions arise for consideration, and the same cannot effectively be determined because the factual aspects thereof will have to be considered, looking to the fact that they are inextricably mixed with the facts. The questions that arise for consideration are not the pure question of law but the mixed questions of law and facts and for just and effective adjudication thereof, the oral evidence already on record, and that is necessary to be adduced in this behalf, will have to be considered. In view of the matter, though I am aware that power to remand should be exercised rarely, with no option the case is required to be remanded reluctantly;

10. For the aforesaid reasons, the petition is allowed, and the order dt. 9th August 1994 passed by the Gujarat Revenue Tribunal, copy of which is produced at Annexure A, the order dt. 29th August 1989 passed by the Deputy Collector, confirming the order dt. 15th February, 1988 passed by the Mamlatdar & A.L.T. and the order dt. 15-2-1988 passed by A.L.T., Anand in Tenancy Case No. 96 of 1986 declaring the deceased to be the tenant of the land, are hereby quashed and set aside. The Tenancy Case is remanded to the Mamlatdar & A.L.T., Anand for a fresh consideration hearing and disposal in accordance with law. The Mamlatdar & A.L.T., Anand will give every reasonable opportunity to both the party, and hearing them keeping above observations in mind, shall dispose the Tenancy Case of in accordance with law at his earliest but not later than 15th February 1997. No order as to costs in the circumstances of the case. Rule made absolute.
